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Date: May 19, 2009 /Michelle Folger/
Michelle Folger

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application

Applicant:	Yoshida, et al	:	Art Unit:	1621
Serial No.:	10/570,013	:	Examiner:	Shailendra Kumar
Filed:	February 28, 2006	:		

Title: AGRICULTURAL/HORTICULTURAL INSECTICIDE AND METHOD FOR USING THE SAME

PETITION UNDER 37 CFR 1.144 TO HAVE RESTRICTION WITHDRAWN

Commissioner for Patents
Mail Stop Petitions
P. O. Box 1450
U.S. Patent and Trademark Office
Alexandria, VA 22313-1450

Dear Sir:

This paper is responsive to the Restriction Requirements dated March 25, 2008 and December 19, 2008, and a Petition from Requirement for Restriction under 37 C.F.R. § 1.144 in order to have the restriction requirements withdrawn.

REMARKS

Claims 1-21 are pending in the subject application. For at least the following reasons, it is respectfully requested that the restriction requirement be withdrawn and Groups 1-5 and 8 be examined together, and that the examination extend to a nonelected species.

The Examiner is imposing a Restriction Requirement, categorizing the claims as follows:

Group 1: claims 1-8, 17, and 18, drawn to compounds,
Group 2: claim 9 drawn to compounds,
Group 3: claim 10 drawn to compounds,
Group 4: claim 11 drawn to compounds,
Group 5: claims 12-14 drawn to process of making compounds,
Group 6: claim 15 drawn to compounds,
Group 7: claim 16 drawn to compounds; and
Group 8: claims 19-21 drawn to a method of using compounds.

Applicants elected in the Supplemental Reply dated September 11, 2008 with partial traverse Group 1 drawn to compounds. The election was made with partial traverse because it is respectfully submitted that Groups 2-5 and 8 can be deemed within the same group as Group 1. More specifically, Group 1 relates to a compound of Formula (1), Groups 2-4 relate to an intermediate of the compound of Formula (1), Group 5 relates to a method of making the compound of Formula (1), and Group 8 relates to a method of using the compound of Formula (1). Consequently, Groups 1-5 and 8 have a common characteristic of the compound of Formula (1) and have unity in accordance with the PCT unity rules. PCT Unity is satisfied when 1) multiple inventions have unity when the inventions have the same or corresponding special technical features, and 2) the special technical features are common features that

define the inventions over the prior art. In this case, the compound of Formula (1) is the special technical feature. As the Office Action dated December 19, 2008 indicates, one species of the compound of Formula (1) is free of prior art. Withdrawal of the restriction requirement is respectfully requested.

Moreover, as provided in 37 CFR § 1.475(b), a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to one of the following combinations of categories: (1) A product and a process specially adapted for the manufacture of said product; (2) A product and a process of use of said product; (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; (4) A process and an apparatus or means specifically designed for carrying out the said process; or (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process. *See* MPEP § 1850. In addition, under PCT Rule 13.2, intermediates and final products will be considered to have unity of invention. *Id.*

As discussed above, Groups 2-4 relate to an intermediate of the compound of Formula (1), Group 5 relates to a method of making the compound of Formula (1), and Group 8 relates to a method of using the compound of Formula (1). Therefore, Groups 1-5 and 8 have unity of invention in accordance with the PCT unity rules. At the very least, Groups 1, 5 and 8 have a common characteristic of the compound of Formula (1) and have unity in accordance with the PCT unity rules.

The Examiner is also imposing an Election Requirement, requiring election of a chemical species, categorizing the species by the specific chemical entities. Applicants elected in the Supplemental Reply dated September 11, 2008 with traverse Compound No. 130, N-(2,6-dimethyl-4-heptafluoroisopropyl)phenyl 3-(2-chloroethoxycarbonylamino) benzamide. Claims 1-14 and 16-21 are readable on the elected species.

The Examiner indicates on page 3 of the Office Action dated December 19, 2008 that the elected species is free of prior art. The Examiner, however, requests Applicants to rewrite claims 1-8, 17, and 18 in independent from encompassing the elected species in order to get an allowance for the claims.

When a claim recites alternatives and encompasses at least two independent or distinct inventions, the examiner may require a provisional election of a single species prior to examination on the merits. MPEP § 803.02. However, no prior art is found that anticipates or renders the elected species, the examination of the claim will be extended to a nonelected species. *Id.*

It is respectfully requested that the Examiner extend the examination to a nonelected species since the Examiner indicates that there are no art rejection regarding the elected species. If each of the species should be included in a single patent application, the cost of the patent applications for all the species would be prohibitively high, the prosecution of the patent applications would include an immense amount of time, and the subject invention of the compound of Formula (1) would not appropriately protected.

Should the Patent Office believe that a telephone interview would be helpful to expedite favorable prosecution, the Patent Office is invited to contact Applicants' undersigned attorney at the telephone number listed below.

In the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 50-1063.

Respectfully submitted,

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